

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

This document relates to:  
*All Cases*

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MDL No. 2804

Hon. Judge Dan A. Polster

**DEFENDANT J M SMITH CORPORATION'S  
STATUS REPORT FOR JUNE 22, 2022 CONFERENCE**

Pursuant to the Court's April 21, 2022 Order (Doc. No. 4380), Defendant J M Smith Corporation ("Smith") respectfully submits this status report in advance of the June 22, 2022 status conference.

**I. Background**

Smith, based in Spartanburg, South Carolina, is a full-line distributor of pharmaceuticals, medical equipment, over-the-counter medicines, gifts, and sundries to pharmacies and long-term-care facilities chiefly in the southeastern United States.

Burlington Drug Company ("Burlington") is a wholly owned subsidiary and part of Smith's "Defendant Famil[y]." *See* Doc. No. 4380 at 1 n.1. Formerly located in Burlington, Vermont, the company distributed wholesale pharmaceutical products in 9 northeastern states prior to its acquisition by Smith in 2017.

In this MDL, Burlington and Smith are named in approximately 9 cases and 331 cases, respectively. Based on ARCOS data for the 2006–2014 reporting period, Smith has no market share in 19 states. Smith has 2% or greater market share in only 10 states.

**Fig. 1: Smith's Cases and Market Share in Primary Geographic Footprint**

	AL	AR	FL	GA	KY	MS	NC	SC	TN	VA
<b>Cases</b>	15	1	8	129	18	17	34	0	16	6
<b>% Market Share</b>	3.54	12.26	2.19	13.17	5.35	6.50	5.1	9.69	7.26	2.94

Smith has no market share in the counties or parishes where the plaintiffs in 41 of its MDL cases are located. Smith would greatly appreciate the Court's assistance in securing voluntary dismissals of those cases (or cause shown why they should not be dismissed as to Smith).

Burlington has less than 2% market share in each of the 9 states in which it did business except for its home state of Vermont. For 1 of the 9 cases in which it is named, brought by a board of county commissioners in Oklahoma, Burlington has no market share in the state.

## **II. Active State-Court Litigation**

Although Smith has not been part of an MDL active track, the company has active litigation in the courts of Georgia and South Carolina.

**Georgia.** Smith is one of 3 distributor defendants in *Poppell v. Cardinal Health, Inc.*, Civ. Action No. CE19-00472 (Ga. Super. Ct. Glynn Cnty.). In that case, 21 relatives of opioid addicts have brought claims against Smith and others for violations of the Georgia Drug Dealer Liability Act (DDLA), violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO), negligence, breach of statutory duty, and punitive damages based on alleged failures to maintain effective controls against diversion. Discovery is complete. After trial was continued during jury selection on March 21, 2022, it was rescheduled for July 18, 2022. Trial is expected to last between 6 and 8 weeks.

Smith is also the only remaining distributor defendant in the Georgia Attorney General's action, *State of Georgia v. Purdue Pharma L.P., et al.*, Case No. 19-A-00060-2 (Ga. Super. Ct. Gwinnett Cnty.). That case entails claims for public nuisance, negligence, RICO, unjust enrichment, civil conspiracy, false advertising, negligence per se, breach of statutory duty, and punitive damages. Discovery is set to conclude in August 2022. Trial is scheduled for April 2023.

**South Carolina.** Smith is a defendant in *In re South Carolina Opioid Litigation*, consolidated in the Court of Common Pleas for the Ninth Judicial Circuit (Greenville). In that litigation, brought by approximately 50 political subdivisions, discovery is proceeding against Smith and others on the claims of three bellwether-plaintiff counties. The discovery deadline is February 10, 2023.

### **III. Settlement**

Although Smith has in the past settled and offered to settle opioid litigation, the company is not currently engaged in active settlement negotiations. Smith remains interested, however, in resolving this litigation amicably. With respect to whether Smith “prefer[s] to retain an outside mediator or have the Court assist in those negotiations” (Doc. No. 4380 at 2), Smith wishes to first engage an outside mediator.

### **IV. Additional Bellwether Trials**

In its April 21, 2022 Order, the Court observed that “the major Manufacturer Defendants . . . have all either reached a global settlement, declared bankruptcy, engaged in litigation, or settled numerous individual cases. The major Distributor Defendants . . . have reached a global settlement.” *Id.* at 1. While Smith has not reached a global or individual settlement here, it has

fully engaged in litigation, including in the courts of one state from which more than one-third of its MDL cases arise (Georgia).

The bellwether value of these state-court bellwethers in both discovery and factfinding obviates the need for additional bellwether trials involving Smith. Indeed, there will be a verdict this summer in the first of Smith's cases to go to trial. This verdict should provide both Smith and plaintiffs here with a crucial bellwether-data point for settlement negotiations. For these reasons, Smith submits that there should be no additional bellwether trials involving Smith, and thus proposes no "potential cases to be named as new bellwether tracks." Doc. No. 4380 at 2.

Respectfully submitted,

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Dated: June 16, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2022, Defendant J M Smith Corporation's Status Report for June 22, 2022 Status Conference was served on all counsel of record via the CM/ECF system.

/s/ John J. Haggerty

John J. Haggerty